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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,279	07/31/2003	Keith A. Ranieri	FIRS-2992	3766
5409 7590 06/10/2010 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110				
EXAMINER				
UTAMA, ROBERT J				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
06/10/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/631,279

**Applicant(s)**

RANIERE, KEITH A.

**Examiner**

ROBERT J. UTAMA

**Art Unit**

3715

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03/26/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-8 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-8 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Status of the application***

1. This office action is a response to the amendment and argument filed on 03/26/2010. The current status of the application is as follows: claims 1, 4-8, 17-20 are still pending, claims 2-3 have been cancelled and claims 9-16, 21-33 have been withdrawn.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/26/2010 has been entered.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:  
  
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1, 4-8 and 17, 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: Setting the point of Efficiency on a treadmill, measuring an initial parameter, starting a timer, measuring a current physical parameter and stopping the time and recording a length time when the user's current physical parameter is outside the tolerance function. Claims 1 and 17 set forth the method of

calculating the point of efficiency and training the subject within the point of efficiency.

However, claims 1 and 17 lack the step required to perform such training as specified in FIG. 5 and page 17-20 of the applicant's specification. For example, the method of claims 1 and 17 lack the limitation on when to stop the training session. One interpretation of claim 1 and 17 is that the user would need to continually train without ever stopping.

6. Claims 1, 4-8, 17 and 18-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. However, the specification, as originally submitted on , do not provide a teaching repeating the method and recalculating the point of efficiency.

7. Claims 1, 4-8, 17 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "... causing the first parameter to vary more rapidly or less rapidly" in claim vary more rapidly or less rapidly is a relative term which renders the claim indefinite. The term " vary more rapidly or less rapidly " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1, 4-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al (NPL) and in view of Kindermann et al (NPL) and further in view of Dardik 6,702,720**

**Claims 1 and 17:** The Yoshida et al reference provides a teaching of:

- providing a performance system (see page 224 "Monark bicycle ergometer");
- measuring an initial measurement of a first parameter of a trainable subject (see page 224 paragraph 4 "... ECG, blood pressure, spirometry ...");
- determining using the control system, for a given activity a point of efficiency of the trainable subject with respect to the first parameter, wherein the point of efficiency is determined by repeatedly increasing stress on the trainable subject by controlling the second parameter and the re-measuring the first parameter until just prior to the trainable subject no longer being able to accommodate additional stress and entering a state of inefficiency or exhaustion causing first parameter to vary more rapidly or less rapidly with respect to the second parameter (see page 224 paragraph 5 – page 225 paragraph 1).
- repeating the method wherein the point of efficiency is recalculated and changes each repetition of the method (see page 225 "Training Regimen" and page 228-229).

The Yoshida reference provides a teaching of providing a control system for controlling a second parameter, wherein the second parameter is a parameter of the performance system and determining a range of tolerance using the control system, surrounding said point of efficiency. However, the Dardik reference provides a teaching of providing a control system for controlling a second parameter, wherein the second parameter is a parameter of the performance system (see col. 5:40-50) and determining a range of tolerance using the control system, surrounding said point of efficiency (see col. 9:55-67). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of a control system for controlling a second parameter, wherein the second parameter is a parameter of the

performance system and determining a range of tolerance using the control system, surrounding said point of efficiency, as taught by Dardik, in order to allow the individual to be trained in an optimal condition (see abstract).

The Yoshida fails to provide a teaching of training the trainable subject within the range of tolerance of the point of efficiency. However, the Kindermann reference provides a teaching of training the subject within said range of tolerance of the point of efficiency so the duration the subject can maintain the point of efficiency changes (see page 29). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of training the subject within said range of tolerance of the point of efficiency so the duration the subject can maintain the point of efficiency changes, as taught by Yoshida, in order to , provide an effective training regimen.

Specifically with respect to claim 17, the Yoshida reference provides a teaching of activating the performance system (see page 224 "Monark bicycle ergometer) and recording at least one second parameter (see FIG 2"workload").

**Claim 4-6 and 18-20:** The Yoshida reference provides a teaching of the first parameter is a physical parameter and the first parameter is selected from chemical activity profile and VO<sub>2</sub> (see page 224 VO<sub>2</sub>max, VO<sub>2</sub> and heart rate "Incremental exercise test").

**Claim 7:** The Yoshida reference provides a teaching of first parameter is selected is observed by a signal selected from physical motion (see heart rate).

**Claim 8:** The Yoshida reference provides a teaching wherein the trainable subject selected from the group of a human (see page 224 "... Thirteen healthy male college students ...").

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1, 4-8 and 17-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on 9-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./  
Examiner, Art Unit 3715

/XUAN M. THAI/  
Supervisory Patent Examiner, Art Unit 3715